

**Title 10 – Department of Natural Resources
Division 23 – Division of Geology and Land Survey
Chapter 1 – Definitions and Organizational Structure**

10 CSR 23-1.075—Disciplinary Action and Appeal Procedures

PURPOSE: This amendment contains procedural regulations for all contested cases before the board.

*PURPOSE: This rule outlines the procedures the division **and board** will take when a permittee is affected by disciplinary action.*

(1) Definitions. As used in this rule, the following terms mean:

- (A) Board—Well Installation Board (WIB);**
- (B) Department—The Department of Natural Resources, which includes the director thereof, or the person or division or program within the department delegated the authority to render the decision, order, determination, finding, or other action that is subject to review by the board;**
- (C) Hearing—Any presentation to, or consideration by the hearing officer of evidence or argument on a petition seeking the board's review of an action by the department;**
- (D) Hearing officer—Administrative Hearing Commission;**
- (E) Person—An individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision or any agency, board, department or bureau of the state or federal government or any other legal entity whatever, which is recognized by law as the subject of rights and duties;**

[(1)] **(2)** The division may cause an investigation to be made in order to determine whether there has been any violation of the law or of these rules and, in doing so, may request the permittee, well owner, or other individuals to appear before them to determine the merits of the situation in question. If requested individuals do not appear before the division, a determination will be made based on the available information. Any person who willfully obstructs, hinders or prevents agents of the division in the performance of the duties imposed on them by section 256.600 – 256.640, RSMo., is guilty of a class A misdemeanor and may be liable for civil and criminal penalties as set out in section 256.637, RSMo. If the division determines that the holder of any permit issued according to sections 256.600 – 256.640, RSMo; has violated any provision of this law or any rule adopted according to this law, the division shall reprimand, place a permit holder on probation, suspend or revoke a permit. For minor violations, the division will issue a reprimand or notice of violation, the remediation required and the time period allowed to remedy the violation.

[2] **(3)** As a condition of any order, the division will specify and schedule any remediation required, and will be present, if deemed necessary, while the remediation is performed. The division shall issue and serve on the permittee, a written notice of the order issued under sections 256.600 – 256.640, RSMo. The order shall specify the particular part of sections 256.600 – 256.640, RSMo., or particular rule of which the permittee is alleged to be in violation and a statement explaining the alleged violation. The order must be sent registered or certified mail, return receipt requested.

[(4)][Any person to whom the division issues an order may appeal it by filing a petition with the board within thirty (30) days of the date of the order. The appeal must be sent registered or certified mail, return receipt requested, to the chairperson of the board. The appeal shall stay the enforcement of the order until a final determination is made by the board.]

(4) Filing an Appeal or Requesting a Hearing.

- (A) Any person adversely affected by a decision of the Department or otherwise entitled to ask for a hearing may appeal to have the matter heard by filing a petition with the Administrative Hearing Commission, within thirty (30) days after the date the decision was mailed or the date it was delivered, whichever date was earlier.**
- (B) A petition sent by registered mail or certified mail will be deemed filed on the date it is mailed. If it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the Administrative Hearing Commission**

[(5)][The board may schedule a hearing or after due consideration of the record, make a final determination as it deems appropriate under the circumstances. The board will inform the person appealing of its decision to consider the record or call a hearing. If the board decides to call a hearing, it will notify the person appealing within thirty (30) days of the time and place of the hearing. At any public hearing all testimony taken before the board, or a hearing officer appointed by the board, shall be under oath and recorded stenographically. The transcript shall be available to any person, for the cost of reproduction.]

(5) Procedures.

- (A) The hearing shall be conducted in accordance with the provisions of chapter 536, RSMo, and the regulations of the Administrative Hearing Commission promulgated thereunder.**
- (B) Upon receipt of the hearing officer's recommendation and the record in the case, the board shall—**
 - 1. Distribute the hearing officer's recommendation to the parties or their counsel;**

2. **Allow the parties or their counsel an opportunity to submit written arguments regarding the recommendation;**
3. **Allow the parties or their counsel an opportunity to present oral arguments before the board makes the final determination;**
4. **Complete its review of the record and deliberations as soon as practicable;**
5. **Deliberate and vote upon a final, written determination during an open meeting, except that the board may confer with its counsel in closed session with respect to legal questions;**
6. **Issue its final, written determination as soon as practicable, including findings of fact and conclusions of law. The decision of the board shall be based only on the facts and evidence in the record; and**
7. **The board may adopt the recommended decision of the hearing officer as its final decision. The board may change a finding of fact or conclusion of law made by the hearing officer, or may vacate or modify the recommended decision, only if the board states in writing the specific reason for a change.**

[(6)] [The board may sustain, reverse, or modify the division's order or may make other orders as it deems appropriate under the circumstances. It shall notify the affected persons in writing by certified or registered mail, return receipt requested.]

- (6)** All final orders and determinations of the board or the division made according to sections 256.600 – 256.640, RSMo., are subject to judicial review according to the provisions of section 536.100, RSMo. Any person who has exhausted all administrative remedies provided by Chapter 536, RSMo., and who is aggrieved by a final decision in a contested case, whether the decision is affirmative or negative in form, shall be entitled to judicial review in the form of a trial de novo in the circuit court of the county where the alleged impropriety occurred.

*Authority: sections 256.600 RSMo (1986) and 256.623 and 256.630, RSMo (Cum. Supp. 1991). * Emergency Rule filed Nov. 16, 1993, effective Dec. 11, 1993, expired April 9, 1994. Original rule filed Aug. 17, 1993, effective March 10, 1994. Amended: Filed November 1, 1995, effective June 30, 1996. *Original authority: 256.600, RSMo (1985) and 256.623 and 256.630, RSMo (1985), amended 1991.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Natural Resources, Division of Environmental Quality, Sheri Fry, PO Box 250, Rolla, MO 65402. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*